M/S GARY YUEN & TAN

v.

DIANA ANN SEAH & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[ORIGINATING MOTION NO: R2-25-58-98]
18 JANUARY 1999

ADMINISTRATIVE LAW: *Remedies - Certiorari, application for - Decision of Industrial Court - Whether there were errors of law - Whether based on facts - Whether appellate court should disturb finding of facts*

LABOUR LAW: *Industrial Court - Decision - Dismissal without just cause and excuse - Allegations of wrong-doing against 1st respondent had no merits - Whether Industrial Court had considered allegations thoroughly - Whether convincing reasons were given - Whether termination of service violated principles of natural justice*

This was an application for an order of *certiorari* to quash the award of the Industrial Court. The Industrial Court had held that the termination of the 1st respondent by the applicant was a dismissal without just cause and excuse and awarded compensation to the 1st respondent in the sum of RM135,000.

The applicant gave eight grounds in its statement made under O. 53 r. 1(2) of the Rules of the High Court 1980 ('RHC') to support its allegation that the Industrial Court had committed various errors of law in arriving at its conclusion.

Held:

[1] The decision of the Industrial Court was purely based on facts and as such, should not be disturbed as the reasons given were not adverse or pervert.

[2] The termination of service of the 1st respondent was an act of victimisation done without just cause and excuse. The said termination was made in violation of the principles of natural justice.

[3] The grounds mentioned in the applicant's statement made under O. 53 r. 1(2) of the RHC were concerned with questions of fact. This was an exercise of judicial review that could not be equated with that of an appeal. The courts would be very slow in disturbing any findings of facts

unless the conclusion arrived at by the court is so absurd that no reasonable person can accept it.

[4] The Industrial Court in arriving at the amount of compensation awarded to the 1st respondent had made use of the correct principles as stated in its award.

[Application dismissed.]

Legislation referred to:
Industrial Relations Act 1967, s. 20
Rules of the High Court 1980, O. 53 r. 1(2)

For the applicant - P Jayasingam; M/s Albar Zulkifly & Yap
For the 1st respondent - K Nadarajah; M/s K Nadarajah & Partners

Reported by Usha Thiagarajah

JUDGMENT

Azmel Maamor J:

The applicant in this case, a legal firm, had applied for an order of *certiorari* to quash the award of the Industrial Court Award No. 248 of 1998 dated 20 May 1998.

The facts of the case are as follows. The 1st respondent was appointed by the applicant as a legal assistant with effect from 1st April 1995. In the letter of appointment it was stated under cl. 11 that either party could terminate the agreement by giving one month's notice to the other party. By invoking this cl. 11 the 1st respondent was terminated by the applicant on 31 March 1996 giving her one month's notice. No reasons were given for the termination. Even though the 1st respondent requested for the reasons the applicant refused to give her the reasons for the termination. Consequently the 1st respondent made representations to the Industrial Relations Department under s. 20 of the Industrial Relations Act 1967. The matter was then referred to the Industrial Court for an award.

At the hearing before the Industrial Court the applicant stated that the reasons for the termination of the services of the 1st respondent were:

> ... On the ground of failure to adhere to instructions, coming to work late, habitually, absence from work without valid reasons, misrepresentations to the Company, dishonesty to the Company, breach of fidelity and good faith and failure to exercise the degree of care reasonably expected of a person of the claimant's skill, knowledge and competence.

The Industrial Court, at the conclusion of the hearing, held that the termination of the 1st respondent was a dismissal without just cause or excuse. Instead of ordering a reinstatement to her former job which it considered to be not condusive, the Industrial Court awarded compensation to the 1st respondent in the sum of RM135,000 to be paid by the applicant. It was against this award that this application was made by the applicant.

In its award the Industrial Court had considered thoroughly the allegations of wrong doings against the 1st respondent by the applicant namely, her failure to attend two court cases; her act of filing in documents at the wrong forum; her giving wrong advice to foreign purchasers in respect of landed property; making defective charge documentation in favour of EON bank; her habitual lateness in coming to office and failure to follow instructions and breach of fidelity, misrepresentation and dishonesty. This last allegation was considered by the Industrial Court to be the most serious of all the charges levelled against the 1st respondent.

As I have said earlier the Industrial Court had considered each and every allegation against the 1st respondent and arrived at the conclusion that none of these allegations had merits. The Industrial Court had given its reasons for arriving at the conclusion that the allegation had no merits. Such conclusion arrived at by the Industrial Court was purely based on facts. I do not think that I should disturb such conclusion as the reasons on which the Industrial Court had arrived at the conclusion was not adverse or pervert. As a matter of fact I wish to commend the Industrial Court for giving a thorough consideration of the allegations and stating convincing reasons in arriving at its conclusion. Taking the whole circumstances of this case I must agree completely with the finding of the Industrial Court that the termination of the 1st respondent was an act of victimisation committed by the applicant. It was done without just cause or excuse. In addition the termination was arbitrarily made in violation of the principles of natural justice. Being a legal firm, expected to be conversant with law, the applicant's failure to dismiss an employee in violation of the principles of natural justice was very undesirable and uncalled for.

The applicant in alleging that the Industrial Court had committed various errors of law in arriving at the conclusion that the termination was without just cause or excuse have eight (8) grounds as mentioned in its statement made under O. 53 r. 1(2) Rules of the High Court 1980. Sad to say that all the grounds are concerned with questions of facts. This is not an appeal from the decision of the Industrial Court. This is an exercise of judicial review which cannot be equated with that of an appeal. As I have mentioned earlier that courts

would be very slow in disturbing any finding of facts unless the conclusion arrived at by the court is so absurd that no reasonable person can accept it. In this case, I was unable to find anything to say that the Industrial Court had arrived at an absurd conclusion which in law can be regarded as having acted in excess of jurisdiction.

On this issue of quantum of compensation awarded by the Industrial Court to the 1st respondent amounting to RM135,000 which included backwages for a period of twenty four months and compensation for loss of employment for a period of three years (being the 9th ground of allegation put up by the applicant) I was fully satisfied that the Industrial Court in arriving at that amount of compensation had made use of correct principles as stated in its award. As such I do not think it would be proper to disturb it.

In the circumstances of the case I dismissed the application with costs.